

\_\_\_\_\_ BILL NO. \_\_\_\_\_

INTRODUCED BY \_\_\_\_\_  
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT AN INSURER OF MEDICAL MALPRACTICE LIABILITY NEED NOT PAY AND MAY NOT BE ORDERED BY A COURT TO PAY ANY TYPE OF DAMAGES, INCLUDING BUT NOT LIMITED TO MEDICAL EXPENSES AND LOST WAGES, PRIOR TO A FINAL SETTLEMENT OR A JUDGMENT WHEN LIABILITY FOR THE ACT OR OMISSION AND LIABILITY FOR THE DAMAGES ARE REASONABLY CLEAR; AMENDING SECTIONS 33-18-201 AND 33-18-242, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 33-18-201, MCA, is amended to read:

**"33-18-201. Unfair claim settlement practices prohibited.** ~~(1) No~~ A person may not, with such frequency as to indicate a general business practice, do any of the following:

~~(1)(a)~~ misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;

~~(2)(b)~~ fail to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

~~(3)(c)~~ fail to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

~~(4)(d)~~ subject to subsection (2), refuse to pay claims without conducting a reasonable investigation based upon all available information;

~~(5)(e)~~ fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

~~(6)(f)~~ neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

~~(7)(g)~~ compel insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by ~~such~~ the insureds;

~~(8)(h)~~ attempt to settle a claim for less than the amount to which a reasonable ~~man~~ person would have believed ~~he~~ that the person was entitled by reference to written or printed advertising material accompanying

1 or made part of an application;

2 ~~(9)(i)~~ attempt to settle claims on the basis of an application ~~which~~ that was altered without notice to or  
3 knowledge or consent of the insured;

4 ~~(10)(j)~~ make claims payments to insureds or beneficiaries not accompanied by statements setting forth  
5 the coverage under which the payments are being made;

6 ~~(11)(k)~~ make known to insureds or claimants a policy of appealing from arbitration awards in favor of  
7 insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the  
8 amount awarded in arbitration;

9 ~~(12)(l)~~ delay the investigation or payment of claims by requiring an insured, claimant, or physician of  
10 either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss  
11 forms; when both of which submissions contain substantially the same information;

12 ~~(13)(m)~~ subject to subsection (2), fail to promptly settle claims, if liability has become reasonably clear,  
13 under one portion of the insurance policy coverage in order to influence settlements under other portions of the  
14 insurance policy coverage; or

15 ~~(14)(n)~~ fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation  
16 to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

17 (2) An insurer of medical malpractice liability need not pay and may not be ordered by a court to pay any  
18 type of damages, including but not limited to medical expenses and lost wages, prior to a final settlement or a  
19 judgment when the insurer's liability for the act or omission and liability for the damages are reasonably clear."

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21 **Section 2.** Section 33-18-242, MCA, is amended to read:

22 **"33-18-242. Independent cause of action -- burden of proof.** (1) An insured or a third-party claimant  
23 has an independent cause of action against an insurer for actual damages caused by the insurer's violation of  
24 ~~subsection (1), (4), (5), (6), (9), or (13)~~ 33-18-201(1)(a), (1)(d), (1)(e), (1)(f), (1)(i), or (1)(m) of 33-18-201.

25 (2) In an action under this section, a plaintiff is not required to prove that the violations were of such  
26 frequency as to indicate a general business practice.

27 (3) An insured who has suffered damages as a result of the handling of an insurance claim may bring  
28 an action against the insurer for breach of the insurance contract, for fraud, or pursuant to this section, but not  
29 under any other theory or cause of action. An insured may not bring an action for bad faith in connection with  
30 the handling of an insurance claim.

(4) In an action under this section, the court or jury may award ~~such~~ damages as were proximately caused by the violation of ~~subsection (1), (4), (5), (6), (9), or (13) 33-18-201(1)(a), (1)(d), (1)(e), (1)(f), (1)(i), or (1)(m) of 33-18-201.~~ Exemplary damages may also be assessed in accordance with 27-1-221.

(5) An insurer may not be held liable under this section if the insurer had a reasonable basis in law or in fact for contesting the claim or the amount of the claim, whichever is in issue.

(6) (a) An insured may file an action under this section, together with any other cause of action the insured has against the insurer. Actions may be bifurcated for trial ~~where~~ when justice so requires.

(b) A third-party claimant may not file an action under this section until after the underlying claim has been settled or a judgment entered in favor of the claimant on the underlying claim.

(7) The period prescribed for commencement of an action under this section is:

(a) for an insured, within 2 years from the date of the violation of 33-18-201; and

(b) for a third-party claimant, within 1 year from the date of the settlement of or the entry of judgment on the underlying claim.

(8) As used in this section, an insurer includes a person, firm, or corporation ~~utilizing~~ using self-insurance to pay claims made against them."

**NEW SECTION. Section 3. Applicability.** [This act] applies to medical malpractice claims that arise after [the effective date of this act].

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